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Paper No. 4

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OFFICE OF PETITIONS

In re Application of
Medhat Osman
Application No. 10/042,737
Deposited: August 29, 2002
Re: Square Ultra Thrust Reverser

DECISION ON PETITION

This is in response to the "Petition to Accord a Filing Date under 37 CFR 1.53" filed August 29, 2002, requesting that application papers previously filed but not of record in the Office be accorded a filing date of March 27, 2001¹. Alternatively, petitioner requests that the copy of the non-provisional application and revised claim set submitted on petition be considered as a new application filed as of the Express Mail date of the petition, August 29, 2002.

Petitioner maintains that a non-provisional application was filed on March 27, 2001. In support thereof, petitioner submitted a copy of a certified mail receipt and of the first page of the non-provisional application as purportedly filed and a copy of the application as petitioner maintains it was originally filed on March 27, 2001.

35 U.S.C. 111(a)(4), provides that:

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

Correspondence received in the Patent and Trademark Office is stamped with the date of receipt, except ... [c]orrespondence filed in accordance with § 1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service. See 37 CFR 1.6. The filing of a paper for the purposes of entitlement to a filing date is not entitled to benefit of a certificate of mailing by First Class mail. See 37 CFR 1.8(a)(2)(i)(A)². Thus, to establish that a paper not entitled

¹ The petition was originally filed by facsimile transmission on August 20, 2002, without the petition fee, and accordingly, could not be considered on the merits. Prior to the mailing of a letter to this effect, the instant petition (and fee) were received in the Office of Petitions.

² Correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the certificate of mailing or transmission procedure, set forth in 37 CFR 1.8 is followed, except in certain enumerated instances.

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to the benefit of a certificate of mailing under 37 CFR 1.8(a) was filed in the USPTO, applicants must have used Express Mail and complied with the provisions of 37 CFR 1.10, or have a postcard receipt establishing that the paper was actually received in the USPTO. Other than in these circumstances, the rules do not provide a mechanism for establishing that such a paper was filed in the USPTO.

Applicant has not shown that application papers purportedly filed on March 27, 2001, but never received in the Office, were filed in compliance with 37 CFR 1.10, or actually received on March 27, 2001 as evidenced by a return postcard receipt³. The certified mail receipt is not a substitute for a return postcard receipt. The certified mail receipt does not serve as *prima facie* evidence of the filing of specific papers in the Office. Unlike the postcard receipt, this receipt is not reviewed by the Office and is not stamped by the Office upon verification that the filing contains the items listed on the receipt (In fact, the certified mail receipt does not itemize what is being mailed).

In view thereof, the petition must be **DISMISSED** to the extent that petitioner requests a filing date of March 27, 2001.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 C.F.R. § 1.181(f). This time period may not be extended pursuant to 37 C.F.R. §1.136(a) or (b).

The applicant papers deposited in the Office on August 29, 2002⁴, and assigned application No. 10/042,737 are being forwarded to the Office of Initial Patent Examination for processing as a new application (No. 10/042,737) filed under 37 C.F.R. § 1.53(b).

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries regarding this matter should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

Beverly Flanagan

~~Beverly Flanagan~~
Supervisory Petitions Examiner
Office of Petitions

³ A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP 503.

⁴ Those papers include: a "Revised Claim Set for Non-Provisional Patent Application," listing 36 claims (4 pages); a copy of Provisional Application No. 60/192,337, in a format similar to an issued patent, including 14 sheets of drawings Figs. 1-32 in non-sequential order; a copy of the filing receipt for the provisional application (2 pages); a copy of a Notice to File Missing Parts of Provisional Application mailed May 26, 2000 (1 page); a paper entitled Patent Disclosure dated March 12, 2000 (3 pages); and a Statement Claiming Small Entity Status (1 page).